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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

SEP 10 2001

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Implementation of Further Streamlining  
Measures for Domestic Section 214  
Authorizations

CC Docket No. 01-150

**COMMENTS OF  
THE COMPETITIVE TELECOMMUNICATIONS ASSOCIATION**

The Competitive Telecommunications Association ("CompTel"), by its attorneys, hereby submits these comments in response to the Commission's Declaratory Ruling and Notice of Proposed Rulemaking ("Notice") in the above-captioned proceeding.<sup>1</sup> In this proceeding, the Commission is considering how to streamline its rules with respect to domestic Section 214 authorizations involving acquisitions of corporate control. CompTel is the premier industry association representing competitive telecommunications providers and their suppliers. Historically, CompTel has had a commitment to ensuring that the FCC's rules and procedures are as friendly as possible to smaller carriers and new entrants. As such, CompTel and its members have a direct interest in this matter.

CompTel strongly urges the Commission to eliminate unnecessary and burdensome regulatory requirements for smaller carriers by eliminating the requirement to obtain transfer of control authority for all non-dominant carriers that operate under blanket domestic Section 214 authorizations. Forbearance from enforcing transfer of control requirements for these non-dominant domestic carriers is lawful and appropriate because the three-part test of Section 10 of

<sup>1</sup> Declaratory Ruling and Notice of Proposed Rulemaking, FCC 01-205, rel. July 20, 2001.

the Communications Act is satisfied in this case.<sup>2</sup> Section 10 directs the Commission to forbear from enforcing a regulation or provision of the Communications Act when (1) enforcement is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with a carrier or service are just and reasonable and not unjustly or unreasonably discriminatory; (2) enforcement is not necessary to protect consumers; and (3) forbearance is consistent with the public interest.<sup>3</sup> The Commission must also consider whether forbearance will promote competitive market conditions and enhance competition among providers of telecommunications services.<sup>4</sup>

It is not necessary for the Commission to require domestic non-dominant carriers operating under blanket Section 214 authority to obtain approval for transfers of control to ensure that these carriers' rates, terms and conditions are just and reasonable and not unjustly or unreasonably discriminatory. Also, it is not necessary to require these carriers to obtain transfer of control approval in order to protect consumers. By definition, non-dominant carriers face competition in their service areas and lack market power, *i.e.*, they are not able to control prices.<sup>5</sup> As the Commission has recognized, in a competitive environment, market forces can protect the public from unreasonably high rates and undue discrimination.<sup>6</sup>

As a practical matter, any proposed transfer of control that involves a domestic non-

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<sup>2</sup> 47 U.S.C. § 160.

<sup>3</sup> 47 U.S.C. § 160(a).

<sup>4</sup> 47 U.S.C. § 160(b).

<sup>5</sup> *See* 47 U.S.C. §§ 61.3(o) and (u).

<sup>6</sup> *See Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996*, CC Docket No. 97-11, Notice of Proposed Rulemaking, 12 FCC Rcd 1111 (1997) at ¶ 43 ("Section 402(b)(2)(A) NPRM"), *citing Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Therefor*, CC Docket No. 79-252, Fifth Report and Order, 98 FCC 2d 1191 (1985).

dominant carrier and raises concerns about possible impact on consumers will likely require Commission approval in some other fashion, as any such transfer will likely include the transfer of international Section 214 authorizations and possibly Title III licenses as well. The public interest standard associated with transfers of Title III licenses and Section 214 international authorizations is broad enough to encompass concerns about acquisitions of non-dominant carriers providing domestic interstate services or facilities that are subject to blanket Section 214 authority. CompTel notes that transfers of control that raise competitive concerns will probably include the transfer of state authorizations as well and thus are likely to require the approval of state public service commissions as well as the approval of the FCC. The fact that state commissions will also be reviewing transfers of control raising competitive concerns provides additional assurance that the interests of consumers will be protected in these transactions.

In the unlikely event that the proposed transfer of a domestic carrier raises concerns about consumer impact but does not include the transfer of international Section 214 authorizations or Title III licenses, the Commission would still have the ability to stop abusive practices against consumers by exercising its general enforcement powers. Among other things, the Commission can withdraw the blanket Section 214 authorization that allows the abusive carrier to operate.<sup>7</sup> There is no need to require thousands of transactions to be burdened with domestic transfer of control requirements simply on the remote chance that one or two of them might present a public policy issue.<sup>8</sup>

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<sup>7</sup> See *Implementation of Section 402(b)(a)(A) of the Telecommunications Act of 1996*, CC Docket No. 97-11, Report and Order, 14 FCC Rcd 11364 (1999) at ¶ 12.

<sup>8</sup> The FCC has previously relied on its general enforcement powers to protect consumers from abusive practices rather than adopt specific regulatory requirements. For example, the Commission has not prescribed detailed rules on how interexchange carriers can bill to recover their universal service costs because it can always rely on enforcement

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The experience of the last 17 years strongly suggests that the combination of market place forces and Commission approvals for international Section 214 authorization or Title III license transfers will in fact protect consumers from any unjust or unreasonable rates or practices that may result from the transfer of control of a domestic non-dominant carrier operating under blanket Section 214 authority. Prior to the FCC's last rule revision, the accepted practice was that transfer of control approval was not required. Yet CompTel is not aware of any instance in the last 17 years in which a proposed transfer of control involving a domestic non-dominant carrier raised concerns about possible impact on consumers and bypassed Commission approval.

At the same time, elimination of the transfer of control requirement for domestic non-dominant carriers will promote competition in the telecommunications marketplace and otherwise serve the public interest. Obtaining regulatory approval as a precondition to the transfer of control of a carrier imposes substantial costs on the carrier and other parties involved in the transaction, particularly for smaller carriers operating with limited funds and manpower. Resources must be devoted to the preparation and prosecution of applications that may disclose potentially competitively sensitive information to rivals. The uncertainty of a lengthy review process discourages potential customers from signing service contracts and encourages employees to find employment elsewhere. Eliminating the requirement that domestic non-dominant carriers obtain transfer of control approval will eliminate these costs and facilitate market-driven mergers and acquisitions among such carriers. As such, eliminating the transfer of control requirement will encourage the development of competition in the telecommunications

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procedures to enforce Section 201(b) of the Communications Act. *See Truth-In-Billing and Billing Format*, CC Docket No. 98-170, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 7492 (1999), at ¶ 57.

marketplace.<sup>9</sup>

For these reasons, CompTel urges the Commission to eliminate the transfer of control requirement for domestic non-dominant carriers operating pursuant to blanket Section 214 authority. Should the Commission decide not to eliminate the transfer of control requirement for these carriers, CompTel strongly recommends that the rules established by the Commission with respect to domestic transfers of control mirror the requirements for the transfer of control of carriers holding international Section 214 authorizations. In particular, the content of transfer of control applications for domestic carriers should be as set forth in Section 63.18 of the Commission's Rules (which sets forth the content requirements for international Section 214 applications); domestic transfer of control applications should be processed on streamlined processing and thus automatically granted 14 days after the date of public notice (per Section 63.12 of the Commission's Rules); and *pro forma* assignments and transfers of control should be subject to a subsequent notification rather than a prior approval requirement (per Section 63.24 of the Commission's Rules). Also, a carrier that needs transfer of control approvals for both domestic and international Section 214 authority should be able to combine its request for both approvals into one application. By making the domestic transfer of control requirements mirror the requirements for transfer of control of international Section 214 authorizations and allowing carriers to combine approval requests in the same application, the Commission will minimize the administrative burdens associated with transfer of control requirements and will facilitate the timely closing of transactions. As such, streamlining domestic transfer of control requirements

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<sup>9</sup> The Commission has previously recognized that the costs of complying with regulatory requirements are burdensome and that eliminating these costs by eliminating the underlying regulatory requirements promotes competitive market conditions and enhanced competition among providers of telecommunications services. *See* Section 402(b)(2)(A) NPRM, *supra* note 7, at ¶ 48.

in this fashion will serve the public interest.

Respectfully submitted,

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